

**TOWN OF ANTRIM, NEW HAMPSHIRE
INDUSTRIAL SCALE WIND ORDINANCE
7/5/11**

(With Comments from Carol Ogilvie as of 7-24-11)

	<u>Comments</u>
<p>1.0 Title. This ordinance shall be known as the Town of Antrim, NH Industrial Scale Wind Ordinance.</p>	
<p>2.0 Purpose. The purpose of this Ordinance is to provide for the development and use of wind power as an alternative energy source, benefiting both the economy and the environment, while protecting public health, safety and general welfare, preserving environmental, historic and scenic resources, controlling noise levels and preventing electromagnetic interference. This ordinance provides a permitting process to insure compliance with requirements and standards established therein.</p>	<p>1.0. The Ad Hoc Committee’s Work Program uses the term “Utility” scale, so I’m wondering which is the intended title.</p>
<p>3.0 Authority. This Ordinance is adopted pursuant to the enabling provisions of NH RSA 674:16 and NH RSA 674:1, V.</p>	<p>3.0. If you decide to go with the Conditional Use Permit process, you would want to also reference RSA 674:21</p>
<p>3.1 Conflicts with Other Ordinances and Regulations. If there is a conflict between provisions in this Ordinance or between a provision in this Ordinance and a provision of any other ordinance or regulation, the more restrictive provision shall apply.</p>	
<p>3.2 Validity and Severability. Should any section or provision of this Ordinance be declared by the courts to be invalid, such a decision shall not invalidate any other section or provision of the Ordinance.</p>	
<p>4.0 Effective Date.</p> <p>4.1 This Ordinance shall become effective on the date of its passage.</p>	
<p>5.0 Applicability. This ordinance applies to all Wind Energy Facilities consisting of one or more turbines with a nameplate capacity of more than 100 KW and Meteorological Towers in the <u>Wind Resource Overlay District in the</u> Town of Antrim proposed to be constructed or operated after the effective date of this Ordinance.</p>	<p>5.0. This could be an overlay district, but it also could be set up to be permitted in _____ District(s), subject to... Also, this is a question because I don’t know: is there any reason to have a met tower meet the same standards and go through the same process as a permanent facility?</p>
<p>6.0 Definitions. <i>Attach</i></p>	
<p>7.0 Design, Manufacture, and Construction Standards</p> <p>7.1 The design and manufacture of all meteorological towers, all wind turbines, and all other components of a WEF shall conform to applicable national, state, and local standards for the wind industry, such as those established by the American National Standards Institute (ANSI), Underwriters Laboratories, and similar certifying organizations. All MTs and all components of a WEF shall conform to local, state, and national building codes.</p>	

7.2 **Meteorological towers (MT).** Meteorological towers must be under **200 feet in height**, and must be designed so as not to require lighting. Guy wires are allowed but must be designed so as to limit Environmental Hazard to wildlife, especially birds and bats. For MTs connected with the potential development of commercial WEFs, a Decommissioning Bond will be required to ensure timely removal of the equipment.

Comments

7.2 & 7.3. Based on the state law regarding small wind energy systems (RSA 674:63, II, I question whether the height of either a met tower or an energy facility can be specified.

7.3 Height. The height of a WEF shall not exceed **450 feet**.

7.4 Underground power and transmission lines shall be buried at a depth consistent with state public utility engineering standards to prevent transient ground currents and stray voltage.

7.5 An application for a permit for a WEF that will be connected to the Public Utility Grid shall include a Public Utility Grid Impact Statement documenting all anticipated changes to the public utility grid within the Town of Antrim due to the WEF. The Statement shall be signed and approved by the New Hampshire Public Utilities Commission and shall include proof of leases or rights of way for transmission lines, and an analysis of the residual capacity in the grid that will be available to other local generating projects after the construction of the WEF.

7.6 A WEFT shall be equipped with a redundant braking system that includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall operate in fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

7.7 WEFs shall be designed and sited to prevent the disruption or loss of emergency or private radio, telephone, television, or similar signals. Interference with such communications shall be grounds for ordering the immediate shut down of the WEF until the interference has been remedied.

7.8 WEFTs shall be mounted on monopole towers with no guy wires.

7.9 The color of WEFTs and MTs shall be off-white or grey or some other unobtrusive color approved by the Town of Antrim Planning Board.

7.10 WEFs shall not be used to display signs or advertising except for signs at ground level identifying the turbine manufacturer, the WEF Owner/Operator, emergency contact information, and appropriate warnings as required by national, state, and local laws.

7.11 All construction activities must conform to the approved site plan, including any conditions of approval and changes approved by the **Code Enforcement Officer** and/or the Planning Board.

7.11. The issue of the Code Enforcement Officer needs to be looked at relative to a designated Administrator of the Ordinance.

7.12 **Modification During Construction** If at any time it appears necessary or desirable to modify the approved plans before or during construction of the WEF, the Code Enforcement Officer, with assistance at the Applicant's expense from such staff, consultants or experts as the CEO deems appropriate, is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The Code Enforcement Officer shall issue any approval under this section in writing and shall transmit a copy of the approval to the Selectmen and Planning Board. Revised plans shall be filed with the Planning Board for the record. For major modifications such as relocation of rights-of-way, relation of WEFTs, changes in grade by more than 1%, etc., the Applicant shall submit to the Planning board an amended plan for review and approval.

8.0 **Public Health and Safety Standards**

8.1 **Setback Standards.** All MTs and WEFs must be sited so as to satisfy the Setback Standards for the following hazards: Falling, Debris and ice throw and Shadow Flicker. Setback shall be no less than 1.5 times the maximum height of the MT or wind turbine from the nearest property line. Wind Turbines shall be no less than 5 times the turbine height from occupied buildings.

8.1.1 A WEF shall be designed and sited in a manner that does not result in shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses. Owner/Operators may request a waiver of this standard by means of written Covenants as specified in section _____ of this Ordinance for shadowing or flicker impacts.

8.2 The applicant shall compute or look up, as appropriate, and graph the required setback for each hazard as a circle for a single unit or as a series of connected arcs for multiple units centered on each turbine and submitted with the required setback graphically superimposed to scale on town maps identifying lot owners and lot property lines.

8.3 **Acoustic Standards.** Sound levels due to the operation of the WEF shall not exceed levels set forth herein at property lines or structures in the Town of Antrim. Owner/Operators may request a waiver of these standards by means of written Covenants as specified in section _____ of this Ordinance.

8.3.1 Immission levels at non-participating property lines shall not exceed 5 dBA above preconstruction ambient levels. DBC levels shall not be more than 20 dB above the measured dBA preconstruction ambient level plus 5 dB.

8.1. If the met tower doesn't have blades or turbines or the substance of a permanent facility (?), does it need to have this setback?
Again, based on RSA 674:63, I wonder what the justification is for a setback of 5 times the height. Turbine height needs to be defined so it is clear what the setback is.

8.1.1 & 8.3 both provide for waivers. This could be addressed in a separate section that deals overall with waivers. Even though it states in 13.2.3 that no other waivers shall be permitted, I think that language boxes you in and it should be reconsidered.

Comments

8.3.2 Prior to permit application approval, a pre-construction ambient noise level study shall be conducted at each property line within 2 miles of any proposed wind turbine. Tests shall be conducted using both A weighted (dBA) and C weighted (dBC) scales. A 5 dBA penalty shall be applied for tonal noise. This is a single tone or limited frequency noise (vs. broadband noise) associated with mechanical noise artifacts (i.e. high pitched whining, screeching, buzzing).

8.3.3 Sound measurements shall be carried out at appropriate property lines or structures as soon as possible after the **Town of Antrim Planning Board** determines that a violation of the noise standards may have occurred. Once a violation has been verified, the Owner/Operator shall mitigate the problem within 10 days. **Failure to mitigate the problem will result in the WEF T(s) being declared unsafe and emergency shutdown procedures shall be implemented.**

8.3.4 All sound measurements shall be made by a professional acoustical engineer who is a Full Member of the Institute of Noise Control Engineering (INCE) or who possesses some comparable qualification. The engineer shall chosen by the Owner/Operator from a list provided by the Planning Board and paid by the Owner/Operator.

8.3.5 Except as specifically noted otherwise, sound measurements shall be conducted in compliance with the American National Standards Institute (ANSI) Standard S12.18-1994 "Outdoor Measurements of Sound Pressure."

8.3.6 Sound level meters and calibration equipment shall comply with the latest version of ANSI Standard S1.4 "Specifications for General Purpose Sound Level Meters," and shall have been calibrated at a recognized laboratory within one year before the sound measurements are carried out.

8.4 An Application for a permit to construct a WEF with one or more turbines having a nameplate capacity of 100 kW or more shall include a Fire Prevention and Fire Fighting Plan that has been approved by the Town of Antrim Fire Department. The plan shall identify a response plan to address all potential WEF fire scenarios and include a list of hazardous materials that may be encountered.

8.5 The Owner/Operator of a WEF with one or more turbines having a nameplate capacity of 100 kW or more shall ensure that the WEF complies with the following fire control and prevention measures and assumes responsibility for all associated incremental costs.

- Use of fireproof or fire resistant building materials and buffers as required by state law or the Antrim Fire Department.

8.3.3. Planning Board determining violations is the same issue as the Code Enforcement Officer; an Administrator of the ordinance needs to be identified.

Failure to mitigate the problem does not need to result in the facility being declared unsafe – which may not necessarily be the case because of a sound issue; but it can be declared to be a violation of the approval, which must be corrected.

8.3.5 & 8.3.6. Are these two sections necessary if you are going to have a professional engineer conduct the measurements? Presumably this person would be using the industry-accepted standards of the time.

8.4 & 8.5. Is it necessary to reference a capacity of 100 kw or more when this ordinance is specifically intended for facilities of that scale.

8.5. This almost seems redundant given 8.4 that calls for a Plan. Unless you fold this into 8.4 and say that the Plan shall take these things into consideration.

- Incorporation of a self-contained fire protection system in the WEF turbine nacelle.
- Maintenance of firebreak areas cleared of vegetation, as required by state law or the Antrim Fire Department.
- Provision for any additional fire fighting or rescue personnel, services, training, materials, and vehicles as may be required to deal with any emergency related to the WEF that is beyond the current capabilities of the Antrim Fire Department.

8.6 The Owner/Operator of any WEF shall be responsible for compliance with all ordinances, regulations, and laws applicable to the generation, storage, cleanup, and disposal of hazardous materials connected with the WEF.

8.7 Road and Property Risk Assessment

8.7.1 An application for a permit to construct a WEF shall include a Road and Property Risk Assessment that has been approved by the Town of Antrim Road Agent.

8.7.2 The Town of Antrim Planning Board shall require changes to the Road and Property Risk Assessment plan that it deems appropriate to protect public safety, to protect public and private property, and to address anticipated costs to the town.

8.7.3 A qualified third party engineer, chosen by the Applicant from a list provided by the Planning Board and paid by the Applicant, shall document road conditions prior to the construction of the WEF, and again within thirty days after construction is complete. Any road damage determined by the engineer to have been caused by the applicant or his contractors shall be promptly repaired at the applicant's expense.

8.7.4 The Town of Antrim may bond the roads in compliance with state regulations, and the bond is to be paid by the applicant prior to the transport of WEF components.

8.8 The Owner/Operator of the any WEF shall notify the Town of Antrim Select Board and Planning Board of any "extraordinary event" within 24 hours after that event. Extraordinary events shall include but not be limited to tower collapse, catastrophic turbine failure, fires, leakage of hazardous materials, unauthorized entry into a tower base, thrown blade or hub, injury caused by the WEF, and any other event that affects the public health and safety of the town or its residents.

9.0 **Environmental Standards**

9.1 The siting and construction of all WEFs shall meet all the applicable standards of the Zoning Ordinance of the Town of Antrim and be consistent with the Town of Antrim Master Plan.

9.1. This statement is not limited to environmental issues; it should be earlier in the Purpose or Applicability section.

9.2 **Environmentally Sensitive Areas.** The design, construction, and maintenance of a WEF shall protect all environmentally sensitive areas that may be affected by its siting. Such areas shall include but not limited to wetlands, vernal pools, seeps or springs, steep slopes (equal to or greater than 15%), watersheds, flood plains, significant habitat for wildlife, fish, and plants. An application for a WEF permit shall demonstrate appropriate measures for protecting all such areas during both construction and operation of the WEF.

9.3 **Wildlife Protection.**

9.3.1 The application for a WEF shall include a Wildlife Protection Plan based on pre- construction field studies designed and carried out by a qualified wildlife biologist chosen by the Applicant from a list provided by the Planning Board and paid by the applicant. Such studies shall describe the possible adverse effects of the WEF on birds, bats, animals and their habitats, and shall propose remedies for these effects.

9.3.2 **Post Construction Wildlife Protection Field Studies.** Within three years after completion of construction of a WEF, studies to ascertain its actual effect on wildlife shall be designed and carried out by a qualified wildlife biologist chosen by the Owner/Operator from a list provided by the Planning Board and paid by the Owner/Operator. If these studies demonstrate undue adverse effects on wildlife caused by the WEF, the Owner/Operator shall design and implement an appropriate mitigation plan. The plan shall be submitted to the Town of Antrim Planning Board for approval. The Owner/Operator shall be responsible for the full cost of carrying out the plan.

9.4 **Erosion Control.** WEFs shall be designed, constructed, and maintained in accordance with accepted erosion and sediment control methods as set forth by NH Department of Environmental Services (DES).

9.5 **Water Quality Protection.**

Comments

9.5.1 WEFs shall be designed, constructed, and maintained so as to avoid undue adverse impacts to groundwater, including sand and gravel aquifers. The Planning Board may require as condition of issuing a permit for a WEF that a pre-construction baseline study of all wells, springs, and public water sources within the watershed of the WEF site be conducted. The study shall be designed and carried out by a water quality professional chosen by the Applicant from a list provided by the Planning Board and paid by the Applicant.

9.5.2 Post Construction Groundwater Quality Study. Within two years after completion of construction of a WEF for which the Planning Board has required a pre-construction baseline Water Quality Study as described in section _____ of this Ordinance, a Post Construction Water Quality study of all wells, springs, and public water sources within the watershed of the WEF site shall be designed and carried out by a water quality professional chosen by the Applicant from a list provided by the Planning Board and paid by the Owner/Operator. If degradation or contamination is found to have occurred, fines and/or permanent remedies as required by the Town of Antrim or the State of New Hampshire shall be the responsibility of the Owner/Operator.

9.6 **Hazardous Wastes.** The Owner/ Operator shall be responsible for compliance with all state and federal regulations applicable to the use and disposal of hazardous wastes involved in or generated by the WEF's construction and operation. This responsibility shall extend to safe and lawful disposal of the by-products of any Acid Rock Testing and Mitigation Plan.

9.7 **Blasting.** Owner/Operator of a WEF shall not undertake any blasting without notifying the Town of Antrim and submitting a blasting plan. All blasting shall be in accordance with NH Chapter Saf-C 1600 standards. The blasting plan shall be reviewed and approved by the Antrim Planning Board before any blasting takes place. Forty-eight hour notice shall be given to all residents within a two mile radius of the blasting area (measured horizontally) before blasting can begin.

9.7. This provision seems out of place in the Environmental section. Perhaps move it to Design, Manufacture and Construction?

9.8 **Light Pollution.** All WEFs shall be designed and sited to minimize nighttime light pollution and shall not exceed the minimum requirements by the Federal Aviation Authority. Red lights shall be used instead of white if possible and shall be shielded to the greatest extent possible from viewers on the ground. An applicant for a WEF shall provide a plan showing all lighting on and around the WEF.

9.9 **Scenic Resource Standards.** If a WEF is proposed for a site that is visible from a Scenic or Special Resource as defined by _____, the Applicant shall provide the Planning Board with a Visual Impact Assessment that address the evaluation criteria set forth in the _____.

10.0 **Financial Standards**

10.1 An applicant for a WEF shall provide evidence satisfactory to the Town of Antrim Planning Board that the project is financially viable. Evidence of financial viability shall include the following:

- A budget for the construction of the WEF.
- Proof of adequate financing for all aspects of the construction
- Proof of long-term power purchase contracts
- Proof of adequate funds for Decommissioning as specified in section _____ of this Ordinance.

10.2 The Owner/Operator of a WEF shall maintain a current General Liability Policy covering bodily injury and property damage commensurate with the scope and scale of the project. Proof of current insurance must be presented to the Planning Board with the application for a permit and every year thereafter on the date of the insurance's annual renewal.

10.3 The Owner/Operator of a WEF shall, at his/her expense, be responsible for complete decommissioning of the WEF within twelve months after it ceases to generate electricity, or after its operational license has been revoked.

10.3. I think the decommissioning provisions should be their own section, rather than included with Financial Standards.

10.3.1 Decommissioning shall include removal and disposal off-site of all parts of the WEF (including foundations) in accordance with local, state and federal laws and regulations. Areas of disturbed earth shall be graded, seeded, or otherwise re-vegetated.

10.3.2 A Professional Engineer shall be chosen by the Applicant from a list provided by the Planning Board and paid by the Applicant to estimate the total cost of Decommissioning without consideration of the salvage value of the equipment. The amount of this estimate shall be the amount of the Decommissioning Funds required to be posted at the time of the initial Application.

10.3.3 No permit for a WEF shall be issued until Decommissioning Funds have been posted by the Applicant with a bonding company or a Federal or State-chartered lending institution (the Escrow Agent) authorized to conduct such business in the State of New Hampshire and approved by the Town of Antrim.

	<u>Comments</u>
<p>10.3.4 Estimates as described in section _____ shall be redone annually on the anniversary of the granting of a WEF Permit, and the Owner/Operator of the WEF shall be required to maintain Decommissioning Funds that are at least equal to the most recent estimate.</p>	<p>10.3.4. This is a question for your wind energy experts - how often is it reasonable to estimate the cost of decommissioning; how often would those components change?</p>
<p>10.3.5 Decommissioning funds may be in the form of a performance bond, surety bond, letter of credit or other form of financial assurance acceptable to the Town of Antrim.</p>	
<p>10.3.6 If the Owner/Operator of the WEF does not complete Decommissioning within the time prescribed in section _____ of this Ordinance, the Town of Antrim may take such action as necessary (including court action) to secure the posted Decommissioning Funds and to ensure completion of the Decommissioning.</p>	
<p>10.3.7 The Escrow Agent shall not release the Decommissioning Funds except upon written approval of the Town of Antrim.</p>	
<p>10.4 Tax Agreement and Tax Impact Statement An Applicant for a WEF shall enter into a tax agreement with the Town of Antrim and shall also present the Town a Tax Impact Statement.</p>	
<p>10.4.1 The Tax Agreement shall describe the methodology that will be used for tax valuation of the WEF throughout the period of its useful life.</p>	
<p>The Tax Agreement shall be reviewed by a qualified tax attorney chosen from a list provided by the Town of Antrim Planning Board and paid by the Applicant. No Permit shall be issued until the Tax Agreement has been approved by the Town of Antrim Planning Board.</p>	
<p>10.4.2 The Tax Impact Statement shall estimate the annual tax burden on the citizens of Antrim over a 10 year period beginning with the first full year of the WEF's operation. The Tax Impact Statement's estimates shall be based on the following data and assumptions: 1) the estimated tax contribution from the WEF that will result from the Tax Valuation Agreement; 2) estimated reduction in tax revenue due to any reductions in the value of properties covered by waivers (assuming that other property values remain constant); 3) estimated adjustments to the amount received from the State for aid to education (assuming a constant school budget; 4) estimated adjustments to the amount received as part of the State municipal revenue sharing program; 5 a constant mill rate. The Tax Impact Statement shall be prepared by an Accountant chosen from a list provided by the Town of Antrim and paid by the Applicant.</p>	

10.5 Promises of benefits made to the Town of Antrim by the applicant shall be documented and submitted with the Final Application. These benefits shall become a legally enforceable provision of the permit.

Comments

10.6 Property Value

11.0 Ethical Standards

11.1 All deliberations concerning the permitting and regulation of WEFs shall be conducted at public meetings for which notice has been duly given.

11.2 Conflicts of Interest. No elected or appointed official or employee of the Town of Antrim who has a financial interest in the WEF under consideration shall be directly or indirectly involved in the permitting or other regulation of that WEF. Financial interest includes but is not limited to the following:

- Having right, title or interest in land on which any part of the WEF will be constructed
- Having signed for the Applicant's benefit a Covenant with financial remuneration
- Having a financial arrangement such as employment or the promise of employment—including employment as an outside contractor—with the Applicant
- Serving as a paid representative of an individual or company that derives income from the development of wind power

12.0 Permitting and Licensing Authority

12.1 The Town of Antrim Planning Board is authorized to review all applications for permits to erect Meteorological Towers and to construct Wind Energy Facilities and all applications for operational licenses to operate such Facilities in the Town of Antrim. The Planning Board may approve, reject, or conditionally approve applications in accordance with the standards of this Ordinance.

12.2 The Town of Antrim Planning Board and/or its designated agents or representatives shall have the right to access and inspect WEF sites.

12.3 The Town of Antrim Planning Board reserves the right to limit the number of applications for WEF permits that are under review at any given time. Only one application for a WEF permit will be accepted or processing at any given time.

12.4 The New Hampshire Department of Environmental Services (DES) may be required to review WEF applications within the Town of Antrim. When making its own determination about such applications, the Planning Board shall consider, to the extent applicable, findings in the DES review.

12.5 Reserved: Notification: Property Owners in Setback Areas: Regional Impact_____

12.0. Why permits and licenses, in addition to a Board approval?

12.3. I don't know if this is legal – lawyer question.

12.4. Under what circumstances would DES be required to review an application?

12.5. There should be a provision in the ordinance for notification of regional impact.

Please see comments on the last page regarding the remainder of the document.

13.0 Permit and Operational License Requirements

13.1 **Meteorological Tower (MT).** The application for a permit for an MT shall be consistent with the requirements stated in Section IV of the Antrim Subdivision and Site Plan Review Regulations and shall include the following information:

- Applicant and property owner name, address and contact information
- Proposed location of the MT including lot designation
- Engineering drawing of proposed tower structure, instrument package, and guy system, if any
- Engineering drawing of proposed tower base
- Engineering drawing of tower location showing property lines and setback requirements (as specified in Table 1 of this Ordinance)
- Any building, use or construction permits required by other authorities because of the size or construction of the tower
- Intended period of data collection and date MT will be removed
- Plans for mitigation of Environmental Hazard to wildlife for towers requiring guy systems
- Description of intention
- Decommissioning Bond for MT
- A legally enforceable agreement that the applicant shall pay (in advance if required by the Town of Antrim Planning Board) for the services of all consultants that the Planning Board deems necessary to evaluate the application.
- Fee: Per fee schedule

13.2 **Wind Energy Facility (WEF).** A Preliminary Application for a Permit to Construct a WEF shall include at least eight hard copies. Upon approval of the Preliminary WEF Application, a Final WEF Application shall be prepared and submitted in at least eight hard copies. Approval of the Final WEF Application shall constitute a Permit to Construct the WEF.

13.2.1 **The Preliminary Application shall include the following items in addition to the requirements in section _____ of the Town of Antrim Major Site Plan Review Regulations.**

- Applicant and property owner's name, address and contact information
- Nameplate data for the type of WEF turbine(s) to be used including manufacturer, model, rated power output and maximum sound power level
- Engineering drawing of the type of WEF turbine to be used
- Certification of the non-reflecting properties of the WEF turbine's external surfaces
- Engineering drawing of the tower base for the type of WEF turbine to be used
- Engineering drawing of the WEF turbine location(s)
- Engineering or architectural drawings of all planned structures, including structures for support and maintenance of the WEF
- Description of intended use, including energy storage and grid connections, and the percentage (if any) of generation intended for sale or use by entities or persons other than the applicant
- Engineering drawings and/or electrical schematics of any energy storage equipment or facilities
- Calculations and supporting data for all setback requirements (as specified in _____ of this Ordinance). Setback requirements must be calculated for each WEF turbine.
- Overlay of Town of Antrim property maps showing the setback area and all property lines and rights of way affected by the setback requirements
- List of property owners whose property, wholly or in part, lies within the setback areas
- Shadow-Flicker Modeling Report as specified in _____ of this Ordinance
- A legally enforceable agreement that the applicant shall pay (in advance if required by the Town of Antrim Planning Board) for the services of all consultants that the Planning Board deems necessary to evaluate the application
- Fees: **As established by the Board of Selectmen – Why BOS**

13.2.1.1 The Planning Board shall make findings of fact and conclusions relative to the standards contained in this Ordinance and the Zoning Ordinance of the Town of Antrim, New Hampshire. If the Planning Board finds that all standards have been met, they shall approve the Preliminary WEF Application. If the Planning Board finds that any of the standards of this Ordinance or the Zoning Ordinance of the Town of Antrim, New Hampshire, have not been met, the Planning Board shall either deny the Preliminary WEF Application or approve the Preliminary WEF Application with conditions to ensure all of the standards will be met. The reasons for any conditions shall be stated in the findings of facts and conclusions.

13.2.2 The Final Application shall include the following items in addition to the requirements in section _____ of the Town of Antrim Major Site Plan Review Regulations.

- Updates to information provided in the preliminary permit, including additions, corrections, and any other changes
- Results of any meteorological testing
- Any building use or construction permits required by other authorities due to the scope of the intended project
- Public Utility Grid Impact Statement as specified in section _____ of this Ordinance
- Financial analysis including evidence of financial capacity to carry out the project, as specified in section _____ of this Ordinance
- Proof of general liability insurance as specified in section _____ of this Ordinance
- Decommissioning bond as specified in section _____ of this Ordinance
- Tax Valuation Agreement as specified in section _____ of this Ordinance
- Tax Impact Statement as specified in section _____ of this Ordinance
- Statement of Benefits promised to the Town of Antrim, if any
- Fire Prevention and Fire Fighting Plan as specified in sections _____ of this Ordinance
- Road and Property Risk Assessment as specified in section _____ of this Ordinance
- Plan to protect Environmentally Sensitive Areas, as specified in section _____ of this Ordinance
- Wildlife Protection Plan as specified in section _____ of this Ordinance
- Baseline Water Quality Study (if required) as specified in section _____ of this Ordinance
- Plan for the handling and disposal of Hazardous Wastes as specified in section _____ of this Ordinance
- Plan to minimize Light Pollution as specified in section _____ of this Ordinance
- Visual Impact Assessment (if required) as specified in section _____ of this Ordinance
- Blasting Plan as specified in Section _____ of this Ordinance
- A legally enforceable agreement that the applicant shall pay (in advance if required by the Town of Antrim Planning Board) for the services of all consultants that the Planning Board deems necessary to evaluate the application.
- Fees : **As established by the Board of Selectmen**

13.2.2.1 The Planning Board shall make findings of fact and conclusions relative to the standards contained in this Ordinance and the Zoning Ordinance of the Town of Antrim, New Hampshire. If the Planning Board finds that all standards have been met, they shall approve the Final WEF Application. If the Planning Board finds that any of the standards of this Ordinance or the Zoning Ordinance of the Town of Antrim, New Hampshire, have not been met, the Planning Board shall either deny the Final WEF Application or approve the Final WEF Application with conditions to ensure all of the standards will be met. The reasons for any conditions shall be slated in the findings of facts and conclusions.

13.2.3 An applicant for a WEF Permit may also apply for a waiver of the Flicker Hazard and the Acoustic Standards specified in section _____. The Application (in at least eight hard copies) shall be submitted with the Final Application for the WEF and shall include the following items:

- A legal Covenant signed by the Applicant and each Inhabitant or Property Owner or other party of legal status in the Town of Antrim whose residence and/or property falls within the Flicker Hazard and Acoustic Hazard setback areas for the WEF declaring that the Inhabitant is willing to waive with respect to his/her residence and/or property the Flicker Hazard and/or Acoustic Hazard Setback Standards of this Ordinance and also the Acoustic Standards specified in section _____, including the protections they afford for the value of his/her property and for his/her personal health, safety, and welfare.
- A declaration signed by parties to the Covenant that it has been recorded at the Hillsborough County Registry of Deeds office appropriate to the affected property, and that the Covenant contains such legal language as may be necessary to make the agreement binding on current and future Inhabitants and/or Property Owners.
- A declaration signed by parties to the Covenant of the amount and terms of any consideration(s) provided to the Inhabitant and/or Property Owner for entering into the Covenant.

- A declaration signed by parties to the Covenant that they recognize that the burden of proof as to the legality of the Covenant and any Waiver of Standards of this Ordinance that may be granted by the Planning Board rests on the Applicant.
- Waivers shall be permitted for Acoustic Hazard and Flicker Hazard Standards
- No Waivers of other Requirements and Standards in this Ordinance shall be permitted.

13.3 An application for an Operational License shall be submitted in eight hard copies to the Town of Antrim Planning Board after the WEF has been fully built. An Operational License is required for the operation of any WEF built in the Town of Antrim.

13.3.1 The application for an original Operational License shall include the following items:

- An Inspection Report certifying the structural and operational integrity of the WEF. This Report shall be signed by a New Hampshire licensed professional engineer chosen by the Town of Antrim Planning Board and paid by the Owner/Operator of the WEF.
- A signed statement that the Applicant has read this Ordinance, understands all its provisions, and agrees to abide by them.
- Fee: As established by the Selectmen.

13.3.2 An Operational License shall be valid for _____ years and can be renewed by submission of a new Inspection Report and Fee as specified in section _____ of this Ordinance at least thirty days before expiration of the License.

13.3.3 An Operational License shall be revoked and the WEF required to cease operations if the Town of Antrim Planning Board determines that the WEF is violating any of the standards and requirements of this Ordinance. The Operational License shall not be reinstated until the Planning Board is satisfied that all violations have ceased and all problems have been corrected.

13.3.4 An Operational License shall automatically terminate upon transfer of ownership of the WEF. The new Owner/Operator shall apply for a new Operational License and shall not operate the WEF until the new License has been issued.

13.3.4.1 The Application for an Operational License by a new Owner/Operator shall contain the following items:

- Copies of the original Permit Applications, updated as necessary, and signed by the new Applicant
- A copy of the original Operational License Application, updated as necessary, and signed by the new Applicant
- A statement, signed by the new Applicant, that he/she has read this Ordinance, understands it, and will abide by all of its provisions.
- Fee: As established by the Selectman.

13.3.4.2 A new Applicant for a WEF shall provide evidence satisfactory to the Town of Antrim Planning Board that the project remains financially viable. Evidence of financial viability shall include the following:

- Proof of long-term power purchase contracts.
- Proof of adequate funds for Decommissioning as specified in Section _____ of this Ordinance.

13.3.4.3 Within _____ days of the Planning Board receiving an Application for a WEF Operational License, the Planning Board shall, with assistance from such staff, consultants, committees or commissions as it deems appropriate, notify the applicant in writing that the application is complete or, if the application is incomplete, shall inform the applicant of the specific additional material needed to complete the application.

13.3.4.4 Within _____ days of the determining that the Operational License Application is complete, the Planning Board shall determine whether the WEF Application meets the requirements for an Operational License. In determining whether the WEF Application meets the requirements of this Ordinance, the Planning Board may obtain

assistance from such staff and consultants as it deems appropriate.

13.3.4.5 The Planning Board shall make findings of fact and conclusions relative to the standards contained in this Ordinance. If the Planning Board finds that all standards have been met, they shall approve the WEF application. If the Planning Board finds that any of the standards of this Ordinance have not been met, the Planning Board shall either deny the WEF Application or approve the WEF Application with conditions to ensure all of the standards will be met. The reasons for any conditions shall be stated in the findings of facts and conclusions.

14.0 Violations and Enforcement

14.1 It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he/she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall order discontinuance of illegal use of land, buildings or structures, removal of illegal buildings, structures, additions, or work being done, or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.

14.2 The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.

14.3 Legal Action and Violations: When any violation of any provision of this Ordinance shall be found to exist, the Municipal Attorney, as designated by the Town of Antrim, either on his own initiative, or upon notice from the Code Enforcement Officer, is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Antrim.

14.4 Fines: Any person, including, but not limited to, a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this Ordinance or a permit or license issued pursuant hereto shall be subject to enforcement and penalties as allowed by NH R.S.A. 676:17. The Town of Antrim is authorized to enter into a Consent Agreement and in such cases court action is not necessary.

15.0 Appeals

Final Comments:

1. Regarding Section 13, I am unclear on the need for a separate license, but I am also not sure whether planning boards have the authority to issue licenses to operate. They can issue permits for certain things (e.g. excavation) and other uses with the conditional use permit process.
2. I think the process of preliminary application and final application is burdensome and unnecessary. Of more value to the Board, in my opinion, would be to require a preliminary consultation, followed by the formal submittal of all documentation and materials.
3. I would suggest the Board reconsider granting waivers for only flicker and acoustic standards. Also, if you chose to use the Conditional Use Permit process, the Board would be authorized to grant waivers, and that should be clear in the ordinance.
4. Regarding transfer of ownership, I don't know if a license or permit in these cases can be terminated. As I mentioned earlier, with excavations the statute specifies that a permit cannot be transferred with board approval, but I am unaware of other analogous situations.
5. There are numerous references throughout the ordinance to third party reviews. Those could possibly be located in one place and make clear that the Board has the authority to use third party review for any issue involved with the application that it feels is necessary.
6. The ordinance should have an Administration and Enforcement Section that spells out who administers, who enforces, what the penalties are – which could reference the provisions in the Antrim zoning ordinance.
7. The appeals process language will depend on whether this process is by Conditional Use Permit or not.